

1993

# Salt Lake City Corp. v. Calvin Grotepas : Brief of Appellee

Utah Court of Appeals

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Robert Breeze; Attorney for Defendant/Appellant.

Todd J. Godfrey; Assistant City Prosecutor; Attorney for Plaintiff/Appellee.

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DUCKET NO. 930311

SALT LAKE CITY CORP.,  
Plaintiff,  
vs.  
CALVIN GROTEPAS,  
Defendant.

Case No. 930311-CA  
Priority No.2

Appeal from conviction entered in Third Circuit Court, Salt Lake Department, Salt Lake County, State of Utah, Commissioner Judith S. Atherton Presiding; Conviction entered following trial to the Bench on April 26th, 1993.

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**FILED**  
Utah Court of Appeals

NOV 15 1993

*Mary Noonan*  
Mary T. Noonan  
Clerk of the Court

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IN THE UTAH COURT OF APPEALS

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SALT LAKE CITY CORP.,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 930311-CA
	)	Priority No.2
CALVIN GROTEPAS,	)	
	)	
Defendant.	)	
	)	

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BRIEF OF APPELLEE

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IN THE UTAH COURT OF APPEALS

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BRIEF OF APPELLEE

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## BRIEF OF APPELLEE

This Court has jurisdiction over the appeal of Appellant by virtue of Utah Code §78-2a-3(2)(d), (f) (1953, as *amended*, 1992).

The City relies upon the following provisions and statutes:

The Sixth Amendment to the United States Constitution states:

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which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Utah Code §76-6-206(2), et seq (1953, as amended 1992) states:

(2) A person is guilty of criminal trespass if, under circumstances not amounting to burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204:

- (a) he enters or remains unlawfully on property and:
  - (i) intends to cause annoyance or injury to any person or damage to any property, including the use of graffiti as defined in Subsection 78-11-20(2);
  - (ii) intends to commit any crime other than theft or a felony; or
  - (iii) is reckless as to whether his presence will cause fear for the safety of another; or

(b) knowing his entry or presence is unlawful, he enters or remains on property as to which notice against entering is given by:

- (i) personal communication to the actor by the owner or someone with apparent authority to act for the owner;
- (ii) fencing or other enclosure obviously designed to exclude intruders;
- (iii) posting of signs reasonably likely to come to the attention of intruders;

(3) (a) A violation of Subsection (2)(a) is a class C misdemeanor unless it was committed in a dwelling, in which event it is a class B misdemeanor.

(b) A violation of Subsection (2)(b) is an infraction.

(4) It is a defense to prosecution under this section that the:

- (a) property was open to the public when the actor entered or remained; and
- (b) actor's conduct did not substantially interfere with the owner's use of the property.

#### STATEMENT OF ISSUES AND STANDARD OF REVIEW

I. WAS THE CONVICTION OF THE DEFENDANT THE RESULT OF INEFFECTIVE ASSISTANCE OF COUNSEL?

A. Did Trial Counsel's performance meet an objective standard of reasonableness?

B. Is there a reasonable likelihood that the outcome of the

trial would have been different absent Trial Counsel's errors?

II. CAN THE DEFENDANT CLAIM PLAIN ERROR IN THE TRIAL COURT'S FAILURE TO ENTER A JUDGEMENT OF ACQUITTAL BASED ON A DEFENSE THAT WAS NEVER PRESENTED AT TRIAL?

- A. Should the failure to present the statutory defense to trespass have been obvious to the Court?
- B. Did the Trial Court's failure to enter an acquittal based on the statutory defense to trespass affect the substantial rights of the accused?

#### STANDARD OF REVIEW

A question of ineffective assistance of counsel is a mixed question of law and fact. However, where the claim is raised for the first time on appeal, The Court can only determine that the defendant was denied effective assistance of counsel if it can do so as a matter of law. State v. Snyder, 220 Utah Adv. Rep. 36, P.2d \_\_ (Utah App. 1993).

Defendant's claim of plain error is also raised for the first time on appeal. Issues raised for the first time on appeal can be addressed only if the appellate court determines that (1) the error should have been obvious to a trial court, and (2) the error was harmful in that it affected the substantial rights of the accused. State v. Brown, 856 P.2d 358 (Utah App. 1993).

#### STATEMENT OF THE CASE AND NATURE OF THE PROCEEDINGS



On April 1, 1993, Defendant was arrested after he entered the Salt Lake Art Center School in spite of being told by the management and faculty of the Art Center that he was not welcome to return. The defendant was issued a citation for trespassing, an infraction, in violation of the Salt Lake City Code. He was later charged by information with the same offense. Trial to the Bench, the Honorable Judith S. Atherton, Commissioner, was held on April 26, 1993. A judgement of guilty was reached and conviction was entered. This appeal followed.

#### FACTS

In early 1993, the defendant was enrolled at the Salt Lake Art Center School as a student. T. at 5. Defendant was informed on March 23, 1993 and on March 24, 1993 that he would not be accepted as a student at the Art Center School in the future. T. at 5-7. Defendant was specifically told that he was not welcome at the Art Center building. T. at 6.

On April 1st, 1993, Defendant appeared at the entrance to the Art Center School. T. at 8. Defendant was informed that if he entered he would be arrested for trespassing. Defendant asked if Security where going to bar him from entering. He was told that they did not want him to enter because then they would have to arrest him. T. at 8,9. Defendant said "I want to be arrested" and entered the school, where he was arrested. T. at 9.

#### SUMMARY OF ARGUMENT

The failure of trial counsel to raise the statutory defense did not fall below an objective standard of reasonableness because the manner of presenting a defense is a matter of trial strategy and tactics which are in the attorney's discretion. Additionally, the facts of the case suggest that the defense is not applicable. Therefore, the failure to present the defense was harmless and defendant could not be prejudiced.

The failure of the trial court to enter an acquittal based on the statutory defense is not plain error for the same reasons noted above.

#### ARGUMENT

I. THE FAILURE OF TRIAL COUNSEL TO PRESENT THE STATUTORY DEFENSE WAS NOT INEFFECTIVE ASSISTANCE OF COUNSEL.

To sustain a claim for ineffective assistance of counsel, it must be shown that trial counsel's representation fell below an objective standard of reasonableness and that the failure to meet that standard prejudiced the defendant. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984), Fernandez v. Cook, 217 Utah Adv. Rep. 3, \_\_\_ P.2d \_\_\_ (Utah 1993), Snyder, 220 Utah Adv. Rep. 36, \_\_\_ P.2d \_\_\_ (Utah App. 1993), State v. Hay, 221 Utah Adv. Rep. 3, \_\_\_ P.2d \_\_\_ (Utah 1993), State v. Villarreal, 857 P.2d 949 (Utah App. 1993).

A. Trial Counsel's representation met an objective standard of reasonableness.

In Fernandez, the defendant's ineffective assistance claim was based on trial counsel's alleged failure to prepare for a sexual abuse trial properly. Specifically, the failure to interview witnesses including one expert witness and to obtain any independent opinions about the testimony of one expert. The defendant also claimed that counsel was ineffective in claiming to the jury in opening statement that he was prepared to prove fabrication as a defense and then not introducing evidence of a long-standing feud between the defendant and the victim.

In reviewing these claims, the Supreme Court of this state determined that the errors cited were tactical or strategic decisions, and the Court noted "we will not question strategic decisions unless there is no reasonable basis for the decision." Fernandez at 5. The Court also noted that "counsel's manner of presenting a defense, in this case the fabrication defense, goes to the heart of trial tactics." Fernandez at 6.

Similarly, counsel's decisions about what defense to present in the case now before the court are strategic decisions which should not be questioned unless there is no reasonable basis. In the matter at hand, there clearly was a reasonable basis for trial counsel's decision not to present the statutory defense. Utah Code §76-6-206(4)<sup>1</sup> requires that for the defense to be applicable, the

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<sup>1</sup> Although the cited defense is found in the Utah Code, the defendant was tried and convicted in this case under Salt Lake City Ordinance 11.36.130. The Salt Lake City Ordinance does not contain the defense asserted in this appeal and contained in the Utah Code. The City concedes that the statutory defense is applicable to the City Ordinance as well as the State Code.

It is not known whether trial counsel for the defendant was

property must be open to the public when the actor entered or remained. The Art Center is a private, non-profit entity. T. at 10. Additionally, although no evidence was adduced on the point at trial, it could very reasonably be concluded that the school at the Art Center is not a place open to the public, for purposes of the statute.<sup>2</sup> In fact, it is apparent from the evidence adduced at trial, that people are admitted to the school only upon payment of a fee for tuition, and that the Art Center has the authority to properly exclude persons from attending the school.<sup>3</sup> T. at 5-6, 11.

Finally, even if the property were determined to be "open to the public," the invitation as to the defendant had been clearly revoked. Further, the defendant's presence did present a substantial interference with the owner's use of the property. Defendant was told not to return to the Art Center School due to his prior conduct in the course. T. at 12-13, 28. It is apparent from the record that defendant's presence was disruptive and that

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aware of the defense. Reference to the Ordinance defendant was cited under would obviously not have revealed the defense, and further research (or experience) would be needed to adduce that the defense was applicable. Trial counsel may have been aware of the defense and chosen not to present it, which choice the City asserts would be reasonable, or trial counsel may have been unaware of the defense. If unaware, the City does not concede that such unawareness is unreasonable, but rather that there is no prejudice in not presenting the defense. See later discussion, *supra*.

<sup>2</sup> It is clear under Utah law, the defense presented is not restricted to public-owned property, but also applies to private property open to the public. Steele v. Breinholt, 747 P.2d 433 (Utah App. 1987).

<sup>3</sup> Assuming the exclusion is for a non-arbitrary reason.

was why he was asked not to return.

- B. Even if Trial Counsel's representation fell below the required objective standard of reasonableness, there is no reasonable probability of a different result.

In order for Defendant to succeed under an ineffective assistance claim, not only must the representation be shown to fall below the objective standard of reasonableness, but prejudice must also be shown. This means that defendant must show a reasonable probability that the result would have been different, absent the failure of counsel. Strickland, 466 U.S. 688.

In Hay, the defendant was convicted of second degree murder. He appealed claiming ineffective assistance of counsel, specifically noting that counsel was deficient in failing to discover the existence of a knife which defendant alleged was brandished against him by the murder victim. Defendant alleged that the knife would have bolstered his claim of self-defense.

In addressing the claim, the Court went directly to the second prong of the Strickland analysis and found that even if counsel's performance were deficient, it was harmless in light of the other testimony presented at trial. Hay at 5.

Similarly, and as noted earlier, even if counsel failed to act reasonably in not presenting the defense to the trial court, the error is harmless because the defense is not applicable to the facts at hand. The Art Center School is not a place open to the public. Additionally, if it were, the defendant's invitation to

enter the Art Center School had been clearly revoked. Finally, the defendant's presence there did interfere with the owner's use of the property.

II. DEFENDANT CANNOT CLAIM PLAIN ERROR FOR THE FIRST TIME ON APPEAL BECAUSE THE TRIAL COURT'S FAILURE TO ENTER AN ACQUITTAL BASED ON THE STATUTORY DEFENSE TO TRESPASS WAS NOT AN ERROR.

An issue raised for the first time on appeal will be addressed only if the trial court proceedings demonstrate plain error. Plain error will be found only if the appellate court determines that (1) the error should have been obvious to a trial court; and (2) the error must be harmful in that it affects the substantial rights of the accused. State v. Brown, 856 P.2d 358 (Utah App. 1993).

A. Failure to enter an acquittal based on the statutory defense is not error that should have been obvious to the trial court.

Prior discussion had shown that the statutory defense was not applicable to the defendant's case. Therefore, no error was committed in failing to raise the defense, and there is no plain error in the trial court's failure to enter an acquittal.

B. Failure to enter an acquittal based on the statutory defense was not harmful and did not affect the substantial rights of the defendant.

As noted above, the statutory defense was not applicable to the defendant's case, so the court's failure to enter an acquittal

based on the defense was not harmful and did not affect the substantial rights of the defendant.<sup>4</sup>

In summary, trial counsel's representation did not fall below an objective standard of reasonableness, and defendant was not prejudiced. Additionally, the failure of the trial court to enter an acquittal was not plain error.

#### CONCLUSION

For all the foregoing reasons, the City requests that the appeal of the Defendant be denied, with the judgement of the trial court affirmed.

Dated this 8th day of November, 1993.



TODD J. GODFREY  
Assistant City Prosecutor

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<sup>4</sup> The City concedes that if, in fact, the defense did apply to the facts at hand, the second prong of the Brown test would apply, but the City does not concede that such a situation would be "plain error" such that the trial court should have known it was committing error.

**MAILING CERTIFICATE**

I hereby certify that I caused to be mailed four true and correct copy of the above brief of appellee to defense counsel Robert Breeze, 211 East Broadway, #215 Salt Lake City, Utah 84111, and eight copies delivered to the Utah Court of Appeals, 400 Midtown Plaza, 230 South 500 East, Salt Lake City, Utah 84102.

this 8<sup>th</sup> day of November, 1993.

15

A handwritten signature in black ink, written over a horizontal line. The signature is stylized and appears to be "J. B. Breeze".



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# Third Circuit Court, State of Utah

SALT LAKE COUNTY, SALT LAKE DEPARTMENT  
451 South 200 East, Salt Lake City, Utah 84111

## SENTENCE/JUDGMENT FORM Criminal/Traffic

CITY/STATE

Plaintiff,

Case Number 931004073MC

Tape Number 903 C# 110

-VS-

Clerk SALLIE

Date 4-26-93 Time 2PM

Judge COM A THERTON

Plaintiff Counsel GODFREY

Defense Counsel DEMONTREUX

GROTPAS, CALVIN  
DOB: 7-23-43

Defendant

Charges TRESPASS

### CHARGES/AMENDED:

On the 26 day of APRIL 1993 The Court Sentenced the Defendant as Follows:

- (1) Jail \_\_\_\_\_ Suspend \_\_\_\_\_
- (2) Defendant to Commence Serving Jail Sentence \_\_\_\_\_
- (3) Probation 6 MONTH ☒ Good Behavior - Supervised by ☐ AP & P ☐ ACEC ☐ Other
- (4) Community Service/WP \_\_\_\_\_ through \_\_\_\_\_
- (5) Fine \$ 50 / Susp. \$ 50 Fee \$ \_\_\_\_\_ Total -0- Pay 10-26-93
- (6) Restitution \$ \_\_\_\_\_ Pay to: ☐ Court ☐ Victim UPON 6 MONTHS
- (7) Other Costs and Fees \$ \_\_\_\_\_ GOOD BEHAVIOR
- (8) Submit to In/Out Treatment For a Period Of \_\_\_\_\_ PROBATION -  

<input type="checkbox"/> AA Meetings	<input type="checkbox"/> Antibase	<input type="checkbox"/> Health Testing
<input type="checkbox"/> Follow Program	<input type="checkbox"/> Counseling	<input type="checkbox"/> Crime Lab Procedure
<input type="checkbox"/> No Alcohol	<input type="checkbox"/> Classes	<input type="checkbox"/>
<input type="checkbox"/> No Further Violations	<input type="checkbox"/> Employment	<input type="checkbox"/>
- (9) Title 7/Diversion \_\_\_\_\_
- (10) Review \_\_\_\_\_

Circuit Court Judge/Commissioner

APPEAL MUST BE FILED WITHIN 30 DAYS OF JUDGMENT

mission of a burglary or theft is guilty of a class B misdemeanor 1973

#### 76-6-206. Criminal trespass.

(1) For purposes of this section "enter" means intrusion of the entire body

(2) A person is guilty of criminal trespass if, under circumstances not amounting to burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204

(a) he enters or remains unlawfully on property and

(i) intends to cause annoyance or injury to any person or damage to any property, including the use of graffiti as defined in Subsection 78-11-20(2);

(ii) intends to commit any crime, other than theft or a felony, or

(iii) is reckless as to whether his presence will cause fear for the safety of another, or

(b) knowing his entry or presence is unlawful, he enters or remains on property as to which notice against entering is given by

(i) personal communication to the actor by the owner or someone with apparent authority to act for the owner,

(ii) fencing or other enclosure obviously designed to exclude intruders,

(iii) posting of signs reasonably likely to come to the attention of intruders

(3) (a) A violation of Subsection (2)(a) is a class C misdemeanor unless it was committed in a dwelling, in which event it is a class B misdemeanor

(b) A violation of Subsection (2)(b) is an infraction

(4) It is a defense to prosecution under this section that the

(a) property was open to the public when the actor entered or remained, and

(b) actor's conduct did not substantially interfere with the owner's use of the property 1992

### PART 3

#### ROBBERY

##### 76-6-301. Robbery.

(1) Robbery is the unlawful and intentional taking of personal property in the possession of another from his person, or immediate presence, against his will, accomplished by means of force or fear

(2) Robbery is a felony of the second degree 1973

##### 76-6-302. Aggravated robbery.

(1) A person commits aggravated robbery if in the course of committing robbery, he

(a) uses or threatens to use a dangerous weapon as defined in Section 76-1-601, or

(b) causes serious bodily injury upon another.

(2) Aggravated robbery is a first degree felony

(3) For the purposes of this part, an act shall be considered to be "in the course of committing a robbery" if it occurs in an attempt to commit, during the commission of, or in the immediate flight after the attempt or commission of a robbery 1989

### PART 4

#### THEFT

##### 76-6-401. Definitions.

For the purposes of this part:

(1) "Property" means anything of value, including real estate, tangible and intangible per-

sonal property, captured or domestic animals and birds, written instruments or other writings representing or embodying rights concerning real or personal property, labor, services, or otherwise containing anything of value to the owner commodities of a public utility nature such as telecommunications, gas, electricity, steam, or water, and trade secrets, meaning the whole or any portion of any scientific or technical information, design, process, procedure, formula or invention which the owner thereof intends to be available only to persons selected by him

(2) "Obtain" means in relation to property, to bring about a transfer of possession or of some other legally recognized interest in property, whether to the obtainer or another, in relation to labor or services, to secure performance thereof, and in relation to a trade secret, to make any facsimile, replica, photograph, or other reproduction

(3) "Purpose to deceive" means to have the conscious object

(a) To withhold property permanently or for so extended a period or to use under such circumstances that a substantial portion of its economic value or of the use and benefit thereof, would be lost, or

(b) To restore the property only upon payment of a reward or other compensation, or

(c) To dispose of the property under circumstances that make it unlikely that the owner will recover it

(4) "Obtain or exercise unauthorized control" means, but is not necessarily limited to, conduct heretofore defined or known as common-law larceny by trespassory taking, larceny by conversion, larceny by bailee, and embezzlement

(5) "Deception" occurs when a person intentionally

(a) Creates or confirms by words or conduct an impression of law or fact that is false and that the actor does not believe to be true and that is likely to affect the judgment of another in the transaction, or

(b) Fails to correct a false impression of law or fact that the actor previously created or confirmed by words or conduct that is likely to affect the judgment of another and that the actor does not now believe to be true, or

(c) Prevents another from acquiring information likely to affect his judgment in the transaction, or

(d) Sells or otherwise transfers or encumbers property without disclosing a lien, security interest, adverse claim, or other legal impediment to the enjoyment of the property, whether the lien, security interest claim, or impediment is or is not valid or is or is not a matter of official record, or

(e) Promises performance that is likely to affect the judgment of another in the transaction, which performance the actor does not intend to perform or knows will not be performed, provided, however, that failure to perform the promise in issue without other evidence of intent or knowledge is not sufficient proof that the actor did not intend to perform or knew the promise would not be performed 1973

b. Recklessly causes or threatens a substantial impairment of any public utility service; or

2. He or she intentionally damages, defaces or destroys the property of another;

3. He or she recklessly or wilfully shoots or propels a missile or other object at or against a motor vehicle; horse or carriage, operating under the provisions of Chapter 5.37 of this code, or its successor; bus; airplane; boat; locomotive; train; railway car or caboose; whether moving or standing.

B. Violation of this section is a Class B misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss in excess of two hundred fifty dollars, and is a Class C misdemeanor if the actor's conduct causes or is intended to cause loss of less than two hundred fifty dollars. (Ord. 52-89 § 4, 1989; Ord. 88-86 § 60 (part), 1986; prior code § 32-3-5)

#### **11.36.130 Trespass by persons and motor vehicles.**

A. It is unlawful for any person to take down any fence, or to let down any bars, or to open any gate so as to expose any enclosure, or to ride, drive, walk, lodge, or camp or sleep upon the premises of another without the permission of the owner or occupant thereof, or to remain upon such premises after the permission of the owner or occupant thereof has been revoked by such owner or occupant.

B. It is unlawful for any person to drive or park any motor vehicle, motorcycle or motor-driven cycle upon any city-owned property not designated for vehicular traffic or parking without permission of the mayor of the city or his or her designated appointee.

C. It is unlawful for any person to operate any type of motor vehicle (including but not limited to motorcycles, trail bikes, dune buggies, motorscooters or jeeps) upon the private property of another, without first obtaining the written permission of the person in lawful possession of the

property or, if the property is unoccupied, the owner of such property.

D. It is unlawful for any person to operate any type of motor vehicle (including but not limited to motorcycles, trail bikes, dune buggies, motorscooters or jeeps) upon any public property, except designated streets, highways or alleys, without first obtaining the written permission of the public entity which is in possession of such property or, if the property is unoccupied, the public entity which owns such property.

E. Every person who operates any type of motor vehicle upon the private property of another or upon any public property, except as hereinabove provided, at all times while so operating such motor vehicle shall maintain in his or her possession the written permission required by the two preceding subsections, except that, if the same document grants permission to two or more persons, a person named in such document need not have it in his or her possession while another person named in the same document, riding in the same group and not more than three hundred feet from such person, has such document in his or her possession.

F. This section does not prohibit the use of such property by the following:

1. Emergency vehicles;
2. Vehicles of commerce in the course of normal business operations;
3. Vehicles being operated on property devoted to commercial or industrial purposes where such operation is in conjunction with commercial or industrial use and permission for such operation is implied or expressly given by the person in possession of said property;
4. Vehicles operated on property actually used for residential purposes, where such vehicles are there at the express or implied invitation of the owner or occupant;
5. Vehicles being operated on public or private parking lots, where permission to do so is implied or expressly given by the person in possession of such lot.

G. Violation of this section shall be punishable as follows:

1. Trespass in a dwelling shall constitute a Class B misdemeanor violation.

2. Entering or remaining upon property, other than a dwelling, where such trespass would cause injury or property damage, shall be a Class C misdemeanor.

3. Trespass, other than a dwelling, where no damage or injury occurs, is an infraction. (Ord. 88-86 § 60 (part), 1986; prior code § 32-3-3)

**11.36.140 Placing printed matter on vehicles.**

A. It is unlawful for any person to distribute, deposit, place, throw, scatter or cast, or cause to be distributed, deposited, placed, thrown, scattered or cast, any handbill, circular, card, booklet, placard or other printed or written matter of any type, except notice of parking violations together with an envelope for the payment thereof, in or upon any automobile or other vehicle.

B. The provisions of this section shall not be deemed to prohibit the handing, transmitting or distributing of any noncommercial printed or written matter to the owner or other occupant of any automobile or other vehicle who is willing to accept the same. (Prior code § 32-3-9)

**11.36.150 Expectoration and spitting in public places.**

It is unlawful for any person to expectorate or spit, or throw cigar stumps, cigarette stumps or quids of tobacco on the floor of any street railway car or other public conveyance, or public building, or upon any paved sidewalk or paved crosswalk within the city. (Prior code § 32-3-7)

**Chapter 11.40**

**FRAUDS AND CHEATS**

**Sections:**

**11.40.020 Obtaining money or goods under false pretenses.**

**11.40.030 Cheats and swindlers.**

**11.40.040 Using slugs in vending machines.**

**11.40.050 Slugs or counterfeit coins—Manufacture or sale prohibited.**

**11.40.060 Leaving establishment without paying prohibited.**

**11.40.070 Selling or receiving articles with serial numbers or marks removed.**

**11.40.020 Obtaining money or goods under false pretenses.**

It is unlawful for any person, by false or fraudulent representation or pretense, to obtain from another person any chose in action, money, goods, wares, merchandise, chattels, effects or other valuable thing, with intent to cheat or defraud any person of the same, within the limits of the city; provided, the value of the property so obtained does not exceed one hundred dollars. (Prior code § 32-4-1)

**11.40.030 Cheats and swindlers.**

It is unlawful for any person to engage in or practice any game, trick or device with the intent to obtain money or other valuable thing from others by trick or fraud, or to aid or assist therein. (Prior code § 32-4-2)

**11.40.040 Using slugs in vending machines.**

It is unlawful for any person to knowingly place any token, slug, false or counterfeit coin, or